

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-1512V

KEN ANDREW,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 22, 2023

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.

Andrew Henning, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES

On October 13, 2022, Ken Andrew filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*¹ (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine that was administered on October 17, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 17, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On November 22, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$48,197.61 (comprised of \$47,500.00 in pain and suffering and \$697.61 in past unreimbursable expenses). Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$48,197.61 (comprised of \$47,500.00 in pain and suffering and \$697.61 in past unreimbursable expenses) in the form of a check payable to**

¹ National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner. This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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OFFICE OF SPECIAL MASTERS**

KEN ANDREW,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 22-1512V (ECF)
Chief Special Master Corcoran

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On October 13, 2022, Ken Andrew (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza (“flu”) vaccine he received on or about October 17, 2020. Petition at 1.

On November 16, 2023, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. *See* ECF No. 22. On November 17, 2023, Chief Special Master Corcoran issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for his SIRVA. *See* ECF No. 23.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$47,500.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$697.61. *See* 42 U.S.C. § 300aa-15(a)(1)(B).

Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

II. Form of the Award

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of **\$48,197.61**, in the form of a check payable to petitioner. Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Deputy Director
Torts Branch, Civil Division

COLLEEN C. HARTLEY
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

/s/ ANDREW J. HENNING

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